IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL REVISION APPLICATION No 92 of 2001

For Approval and Signature:

Hon'ble MR.JUSTICE C.K.BUCH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

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ALOYSHA INVESTMENT THRO ITS PARTNER GARDEN SILK

Versus

STATE OF GUJARAT

Appearance:

1. Criminal Revision Application No. 92 of 2001

MR AMAR N BHATT for Petitioner No. 1

MR B.D. DESDAI, APP for Respondent No. 1

MR DEVANG T SHAH for Respondent No. 2-5

CORAM : MR.JUSTICE C.K.BUCH

Date of decision: 08/04/2002

ORAL JUDGEMENT

1. Heard ld. counsel Mr. Amar Bhatt for the petitioner- original complainant. Ld. counsel Mr. Bhatt has taken me through relevant facts averred in the petition. On the complaint of the petitioner, Criminal

Case No. 69/2000 came to be instituted in the Court of ld. Judicial Magistrate (F.C.), 3rd Court, Surat against the company and its directors for the offences punishable under Section 138 R/w Section 141 of the Negotiable Instruments Act, 1881 (hereinafter referred to as the Act). Two cheques issued by the Company for Rs. 56,32,070-00 had bounced for "insufficiency of funds" in the bank account of respondent No.2 Company. Obviously, complainant issued a notice to all the directors as required under the provisions of the Act.

2. It is contended by the complainant that the directors who had not responded to the notice, are joined as accused. It is further submitted that two directors namely (i) Suketu Shriram Kapadiya, and (ii) Nilesh Ramanlal Shah have applied to ld. Magistrate for dropping of prosecution against them vide application exh.6 in Criminal Case No. 69/2000. Ld. Magistrate, vide order dated 20.9.2000, rejected the aforesaid application and, therefore, the order of the ld. Magistrate was taken before the higher forum by way of revision. Ld. Addl. Sessions Judge, Surat, while dealing with Revision Application No. 192/2000 preferred by the above-said two directors, allowed the said application vide order dated 10.1.2001 quashing and setting aside the order passed by ld. Magistrate below application exh.6, by dropping the proceedings started against above-said two directors. Aforesaid order of ld. Addl. Sessions Judge, Surat dated 10.1.2001 is under challenge before this Court.

3. On perusal of the papers and facts reflected in the impugned order passed by the ld. Addl. Sessions Judge, it was amply established by the directors of the company that they were no more directors of respondent no.2 company on the date on which both the cheques were issued. They had left the company much prior thereto. Error on the part of both of them was that they did not respond to the statutory notice issued by the petitioner. Placing reliance on the decision of the Andhra Pradesh High Court in the case of Bharatkumar Modi & Others v/s Pennar Paterson Securities Ltd., & Others, reported in 1997 Company Cases P.406 as also decision of the Madras High Court in the case of Ashok Muthanna & Others v/s Wipro Finance Ltd., reported 2001 Company Cases P.203, Mr. Bhatt has submitted that the directors who were pleading case that they were no more directors at the relevant point of time, is a matter of trial and on the strength of such defence proceedings, cannot be terminated or dropped. Though a person who is not in charge of and was responsible to the company for the

conduct of business as well as company, can be prosecuted because they would fall under "deeming fiction" provided under sub-section (1) of Section 141 of the Act.

4. That Scheme of Section 138 R/w Section 141 of the Act is to be read in harmony. It is pertinent to note that two directors who had approached the Court of Sessions, were not the directors of the company at the relevant point of time and so, proceedings ought to have been dropped by the ld. Magistrate in view of the ratio of the decision of this Court in the case of Alka.N.Shah v/s State of Gujarat & Anr., reported in 2000(3) GLH P.468 since they were not in charge of and were responsible to the company for the conduct of business of the company. Hence, finding recorded by the ld. Addl. Sessions Judge, is just, proper and in accordance with law. Decisions on which ld. counsel Mr. Bhatt has placed reliance, have only persuasive value, whereas the decision of this Court in the case of Alka N.Shah (supra) is binding. Under the circumstances, in my view, there is no illegality or perversity in the findings recorded by ld. Addl. Sessions Judge and hence same requires tobe confirmed.

5. For the reasons aforesaid, Criminal Revision Application is dismissed. Impugned judgment dated 10.1.2001 passed by ld. Addl. Sessions Judge, Surat in Criminal Revision Application No. 192/2000 terminating the proceedings against respondent nos. 4 & 5 - original accused and discharging them from the offence punishable under Section 138 R/w Section 141 of the Act, is hereby confirmed. It is, however, clarified that prosecution against rest of the accused shall continue.

6. Rule is discharged.

8.4.2002 [C.K. BUCH, J]
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